IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8082 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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D.R.INDUSTRIES LTD - Petitioner(s)

Versus

SAVITABEN CHHAGANBHAI LIMBACHIA - Respondent(s)

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Appearance :

MR ASHISH H SHAH for Petitioner(s) : 1,

MR PH PATHAK for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 05/09/2005

ORAL JUDGMENT

1. Rule. Learned Advocate Mr.P.H.Pathak waives service of Rule on behalf of the respondent. At the joint request of the learned advocates appearing for the parties, the petition is taken up for final disposal today.

2. In the present petition, the petitioner has challenged the order dated 7th January, 2004 passed by Labour Court, Bharuch as also the order dated 28th March, 2005 passed by the same Court.

3. The respondent herein is the legal heir of workman one Shri Chhaganbhai Karsanbhai Limbachia who had filed T Application No.121 of 1990 against the erstwhile owner of an Industrial Unit called ICG Knitting Industries Ltd. The application came to be allowed by the Labour Court by an order dated 14/7/2000. The workman was ordered to be reinstated with continuity in service and back-wages. It appears that petitioner herein purchased the unit in the year 1993-1994. It appears that workman expired on 24/12/1999. The widow, therefore, filed a recovery application before the Labour Court which application was allowed by an order dated 7/1/2004 directing the petitioner herein to pay an amount of Rs.1,64,630/- to the widow who is respondent herein. The petitioner filed an application being Miscellaneous Application No.3 of 2005 before the Labour Court seeking that the order passed in the recovery application be set aside as the same was ex-parte order. The Labour Court turned down the Miscellaneous Application filed by the petitioner by

an order dated 28/3/2005.

4. Learned Advocate to the petitioner submitted that the condition of the Industrial Unit was financially not sound and that there was only a Security Officer looking after the premises and, therefore, though technically the notice of the Labour Court in the recovery proceedings might have been duly served on the petitioner, the petitioner could not effectively participate in the recovery proceedings. On account of this, recovery proceedings were decided ex-parte. He submitted that the impugned order be set aside on appropriate terms to permit the petitioner to represent its case before the Labour Court in recovery proceedings. Learned Advocate Mr.Pathak on the other hand opposed the petition and submitted that the workman had died long back, the widow of the workman should not be deprived of the benefits of the award of the Labour Court any longer.

5. Considering the submissions made, it would be appropriate to grant one opportunity to the petitioner to represent its case before the Labour Court in the recovery application. However, considering the fact that the award of the Labour Court was passed in the year 2000

and the widow of the deceased workman is clamoring for implementation of the award since then, such permission cannot be unconditional. In that view of the matter, the orders dated 7/1/2004 passed by Labour Court in Recovery Application No.5/01 and order dated 28/3/2005 passed by the Labour Court in Miscellaneous Application NO.3/05 in Recovery Application No.5/01 are set aside on the condition that the petitioner pays a cost of Rs.5,000/- and also pay to the respondent 25% of the amount covered under the order of the recovery application-without prejudice to the rights and contentions of the petitioner-which may be adjusted against the final outcome of the Recovery Application. The respondent shall be paid the said amount of 25% upon her giving an undertaking to the Labour Court that she will refund the same in case she loses in the recovery application eventually. The Labour Court may renew the proceedings only after ensuring that these conditions are complied with. With these directions, the petition is allowed to the above extent. Rule is made absolute.

6. Direct Service is permitted.

(Akil Kureshi, J.)

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